

BY: Judicial Proceedings Committee

AMENDMENTS TO SENATE BILL NO. 694

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike “and Sfikas” and substitute “Sfikas, Blount, Colburn, Conway, Currie, Ferguson, Hoffman, Lawlah, McFadden, Miller, Pinsky, and Ruben”.

AMENDMENT NO. 2

On page 1, in lines 2 and 3, strike “and Scientific Identification Evidence - Postsentencing Procedures and Storage” and substitute “Evidence - Postconviction Review”; strike beginning with “allowing” in line 4 down through “evidence” in line 14 and substitute “authorizing a certain person convicted of certain offenses to file a petition for postconviction DNA testing of certain evidence under certain circumstances; requiring a judge to make certain findings before issuing a certain order for DNA testing; requiring certain notification procedures; requiring the court to include certain items in an order for DNA testing; requiring DNA testing to be ordered in a certain period of time; requiring the costs of DNA testing to be paid by certain persons depending on certain circumstances; requiring the court to take certain actions based on certain results of DNA testing; requiring the State to preserve certain evidence under certain circumstances; authorizing the disposition of certain evidence under certain circumstances; establishing certain procedures for the disposition of certain evidence; defining certain terms; providing for the application of this Act; and generally relating to authorizing a convicted person to file a petition for postconviction DNA testing of certain evidence under certain circumstances”; and in lines 17 and 18, strike “and Scientific Identification Evidence Procedures” and substitute “Evidence - Postconviction Review”.

AMENDMENT NO. 3

On page 1, in line 25, strike “AND SCIENTIFIC IDENTIFICATION EVIDENCE PROCEDURES” and substitute “EVIDENCE - POSTCONVICTION REVIEW”.

On pages 1 and 2, strike in their entirety the lines beginning with line 27 on page 1 through line 24 on page 2, inclusive, and substitute:

(Over)

“(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “DNA” MEANS DEOXYRIBONUCLEIC ACID.

(3) “SCIENTIFIC IDENTIFICATION EVIDENCE” MEANS EVIDENCE THAT:

(I) IS RELATED TO AN INVESTIGATION OR PROSECUTION THAT RESULTED IN A JUDGMENT OF CONVICTION;

(II) IS IN THE ACTUAL OR CONSTRUCTIVE POSSESSION OF THE STATE UNDER SUBSECTION (I) OF THIS SECTION; AND

(III) CONTAINS DNA THAT MAY PRODUCE EXCULPATORY OR MITIGATING EVIDENCE RELEVANT TO A CLAIM OF A CONVICTED PERSON OF WRONGFUL CONVICTION OR SENTENCING IF SUBJECT TO DNA TESTING.

(B) NOTWITHSTANDING ANY OTHER LAW GOVERNING POSTCONVICTION RELIEF, A PERSON WHO IS CONVICTED OF A VIOLATION OF ARTICLE 27, § 387, § 407, § 408, § 409, § 410, § 411, § 462, § 463, § 464, OR § 464A OF THE CODE MAY FILE A PETITION FOR DNA TESTING OF SCIENTIFIC IDENTIFICATION EVIDENCE THAT THE STATE POSSESSES AS PROVIDED IN SUBSECTION (I) OF THIS SECTION AND THAT IS RELATED TO THE JUDGMENT OF CONVICTION.

(C) SUBJECT TO SUBSECTION (D) OF THIS SECTION, A COURT SHALL ORDER DNA TESTING IF THE COURT FINDS THAT:

(1) (I) THE SCIENTIFIC IDENTIFICATION EVIDENCE WAS NOT PREVIOUSLY SUBJECTED TO THE DNA TESTING THAT IS REQUESTED FOR REASONS BEYOND THE CONTROL OF THE PETITIONER; OR

(II) THE TYPE OF DNA TEST BEING REQUESTED IS DIFFERENT FROM TESTS PREVIOUSLY CONDUCTED AND WOULD HAVE A REASONABLE LIKELIHOOD OF PROVIDING A MORE PROBATIVE RESULT THAN TESTS PREVIOUSLY CONDUCTED;

(2) THE SCIENTIFIC IDENTIFICATION EVIDENCE WAS SECURED AS PROVIDED IN SUBSECTION (I) OF THIS SECTION, IN RELATION TO THE CRIME FOR WHICH THE PETITIONER WAS CONVICTED;

(3) THE SCIENTIFIC IDENTIFICATION EVIDENCE TO BE TESTED HAS BEEN SUBJECT TO A CHAIN OF CUSTODY AS PROVIDED UNDER SUBSECTION (I) OF THIS SECTION THAT IS SUFFICIENT TO ESTABLISH THAT IT HAS NOT BEEN SUBSTITUTED, TAMPERED WITH, REPLACED, OR ALTERED IN ANY MATERIAL ASPECT;

(4) IDENTITY WAS AN ISSUE IN THE TRIAL THAT RESULTED IN THE PETITIONER'S CONVICTION;

(5) A REASONABLE PROBABILITY EXISTS THAT THE DNA TESTING HAS THE SCIENTIFIC POTENTIAL TO PRODUCE RESULTS MATERIALLY RELEVANT TO THE PETITIONER'S ASSERTION OF INNOCENCE; AND

(6) THE REQUESTED DNA TEST EMPLOYS A METHOD OF TESTING GENERALLY ACCEPTED WITHIN THE RELEVANT SCIENTIFIC COMMUNITY.

(D) (1) A PETITIONER SHALL NOTIFY THE STATE IN WRITING OF THE FILING OF A PETITION UNDER THIS SECTION.

(2) THE STATE MAY FILE A RESPONSE TO THE PETITION WITHIN 15 DAYS AFTER NOTICE OF THE FILING OR WITHIN THE TIME THAT THE COURT ORDERS.

(E) IF THE COURT ORDERS DNA TESTING UNDER SUBSECTION (C) OF THIS SECTION, THE COURT IN ITS ORDER SHALL:

(1) IDENTIFY THE SPECIFIC SCIENTIFIC IDENTIFICATION EVIDENCE TO BE TESTED;

(2) IDENTIFY THE METHOD OF TESTING TO BE USED; AND

(3) SELECT THE LABORATORY WHERE THE TESTING IS TO BE PERFORMED FROM A LISTING OF ACCREDITED LABORATORIES TO BE MAINTAINED BY THE OFFICE OF THE ATTORNEY GENERAL.

(F) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, DNA TESTING ORDERED UNDER SUBSECTION (C) OF THIS SECTION SHALL BE CONDUCTED AS SOON AS PRACTICABLE.

(2) BASED ON A FINDING OF NECESSITY, THE COURT MAY ORDER THE DNA TESTING TO BE COMPLETED BY A DATE THAT THE COURT PROVIDES.

(G) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE PETITIONER SHALL PAY THE COST OF DNA TESTING ORDERED UNDER THIS SECTION.

(2) IF THE RESULTS OF THE DNA TESTING THAT THE COURT ORDERS UNDER THIS SECTION ARE FAVORABLE TO THE PETITIONER, THE COURT SHALL ORDER THE STATE TO PAY THE COSTS OF THE TESTING.

(H) (1) IF THE RESULTS OF THE POSTCONVICTION DNA TESTING ARE UNFAVORABLE TO THE PETITIONER, THE COURT SHALL DISMISS THE PETITION.

(2) IF THE RESULTS OF THE POSTCONVICTION DNA TESTING ARE FAVORABLE TO THE PETITIONER, THE COURT SHALL:

(I) IF NO POSTCONVICTION PROCEEDING HAS BEEN PREVIOUSLY INITIATED BY THE PETITIONER UNDER § 7-102 OF THIS ARTICLE, OPEN A POSTCONVICTION PROCEEDING UNDER § 7-102 OF THIS ARTICLE; OR

(II) IF A POSTCONVICTION PROCEEDING HAS BEEN PREVIOUSLY INITIATED BY THE PETITIONER UNDER § 7-102 OF THIS ARTICLE,

REOPEN A POSTCONVICTION PROCEEDING UNDER § 7-104 OF THIS ARTICLE.

(I) (1) THE STATE SHALL PRESERVE SCIENTIFIC IDENTIFICATION EVIDENCE THAT:

(I) THE STATE HAS REASON TO KNOW CONTAINS DNA MATERIAL; AND

(II) IS SECURED IN CONNECTION WITH AN OFFENSE DESCRIBED IN SUBSECTION (B) OF THIS SECTION.

(2) THE STATE SHALL PRESERVE SCIENTIFIC IDENTIFICATION EVIDENCE DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION FOR:

(I) A PERIOD OF 3 YEARS AFTER THE IMPOSITION OF SENTENCE; OR

(II) A PERIOD BEYOND 3 YEARS THAT IS REQUIRED PURSUANT TO AN ORDER ISSUED WITHIN 3 YEARS AFTER THE IMPOSITION OF SENTENCE BY THE COURT OF APPEALS OR COURT OF SPECIAL APPEALS THAT IS SPECIFIC TO A SINGLE OFFENSE AND SPECIFIC SCIENTIFIC IDENTIFICATION EVIDENCE RELATING TO THAT OFFENSE.”.

On page 2, in line 25, strike “(2)” and substitute “(3)”; in line 28, strike “(3)” and substitute “(4)”; in line 32, strike “(D)” and substitute “(J)”; and in line 34, strike “(C)” and substitute “(I)”.